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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

2:12-CV-225 JCM (VCF)

TRUSTEES OF THE  
CONSTRUCTION INDUSTRY AND  
LABORERS HEALTH AND  
WELFARE TRUST, et al.,

Plaintiff(s),

v.

SHERYL ARCHIE, et al.,

Defendant(s).

**ORDER**

Presently before the court is defendants' motion for reconsideration. (Doc. # 82). Plaintiffs have responded (doc. # 84) and defendants have replied (doc. # 85).

**I. Background**

Defendants were formerly officers, managers, and/or directors of a cleaning company, Floppy Mop Inc. Plaintiffs collect, or covered employers are required to remit, employee benefit trust funds that provide pension, health and welfare, vacation, and training benefits to certain covered employees.

In a prior lawsuit in this district, *Trustees of the Construction Industry and Laborers Health and Welfare Trust et al v. Floppy Mop Inc.*, case number 2:10-cv-01603-KJD-GWF, plaintiffs obtained a judgment against Floppy Mop in the amount of \$535,158, based on its failure to make required contributions.

1 Plaintiffs then brought the instant suit against defendants individually in order to collect on  
 2 Floppy Mop's unpaid contributions. On March 3, 2014, this court granted plaintiffs' motion for  
 3 summary judgment, finding that the defendants were fiduciaries as defined by ERISA, and could be  
 4 held personally liable for the judgment obtained against Floppy Mop by virtue of their ownership  
 5 and control over the remittance payments. (Doc. # 78).

6 Defendants bring the instant motion asking the court to reconsider that ruling.

## 7 **II. Legal Standard**

8 A motion for reconsideration "should not be granted, absent highly unusual circumstances."  
 9 *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Reconsideration "is  
 10 appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear  
 11 error or the initial decision was manifestly unjust, or (3) if there is an intervening change in  
 12 controlling law." *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

13 Rule 59(e) "permits a district court to reconsider and amend a previous order," however "the  
 14 rule offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation  
 15 of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal quotations  
 16 omitted).

## 17 **III. Discussion**

18 Defendants argue for the first time in their reply in support of their motion for reconsideration  
 19 that the award of attorneys fees and liquidated damages was improper. The court rejects this new  
 20 argument as it was not raised in the motion to reconsider. *See, e.g., Eberle v. City of Anaheim*, 901  
 21 F.2d 814, 817-18 (9th Cir. 1990) (noting new issues cannot be raised in a reply); *United States v.*  
 22 *Bohn*, 956 F.2d 208 (9th Cir. 1992) (same); *see also Carroll*, 342 F.3d at 945 ("A Rule 59(e) motion  
 23 may not be used to raise arguments or present evidence for the first time when they could reasonably  
 24 have been raised in the earlier litigation."). To the extent defendants seek reconsideration of the  
 25 award of attorneys fees and liquidated damages, their request is denied.

26 Defendants then argue, once again, that the judgment obtained against Floppy Mop in  
 27 *Trustees of the Construction Industry and Laborers Health and Welfare Trust et al v. Floppy Mop*  
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1 *Inc.*, case number 2:10-cv-01603-KJD-GWF, was invalid. The court has repeatedly instructed the  
2 defendants that the *only* issue before the court in this lawsuit is whether they can be held personally  
3 liable for that judgment. The court has also repeatedly instructed defendants that this lawsuit is not  
4 the proper avenue in which to attack the judgment previously obtained against Floppy Mop.  
5 Undeterred, defendants rehash the same arguments in their motion to reconsider.

6 These arguments are not new, do not rest on newly discovered evidence, do not demonstrate  
7 the court committed clear error, and do not rely on an intervening change in controlling law. Thus,  
8 there are no grounds upon which the court may reconsider and amend its prior order.<sup>1</sup>

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion for  
11 reconsideration (doc. # 82) be, and the same hereby is, DENIED.

12 DATED April 25, 2014.

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15 **UNITED STATES DISTRICT JUDGE**

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26 <sup>1</sup> Defendants also rely on a recording of a hearing on motions to compel held before Magistrate Judge  
27 Ferenbach as "new evidence." Despite the fact that this is not new evidence, the statements made by the magistrate judge  
28 relate to the amount of payments made or not made in the previous case. The magistrate judge merely recognized in  
passing that a default judgment has already been entered against Floppy Mop and reiterated that the instant lawsuit is  
not the proper setting to raise arguments challenging the default judgment entered in that case. The magistrate judge's  
statements echo what this court has repeatedly told defendants.